

November 7, 2016

**Via Email: [AdelmanPO@wied.uscourts.gov](mailto:AdelmanPO@wied.uscourts.gov)**

The Honorable Lynn Adelman  
USDC for the Eastern District of Wisconsin  
United States Courthouse Room 364  
517 East Wisconsin Avenue  
Milwaukee, WI 53202

**Re: Smithfield Foods, et al. v United States of America**  
**Case No.: 13-C-651**  
**Date of Loss: July 5, 2009**  
**Our File No: 210.92**

Dear Judge Adelman:

In accordance with ECF Doc 216, the parties have agreed on the following issues for the Court to resolve in advance of retrial, if it becomes necessary:

1. Is the measure for the loss of PCI's customized machinery its actual cash value or its replacement cost?
2. Are some or all of Plaintiff's claims for the loss of mechanical, electric, and plumbing utilities (MEP) included in the real-property loss? If so, which MEP claims are included in the real-property loss? If some MEP claims are personal-property losses rather than real-property losses, which MEP claims are recoverable as personal-property losses?
3. Are Plaintiffs' claims for freight, installation, and commissioning manufacturing equipment recoverable?
4. What is the duration of the recoverable lost profits as shown by the evidence?

Each issue will be briefed separately with each party submitting a master set of exhibits with its briefs.

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In addition, the parties have agreed on the following briefing schedule:

- Plaintiffs' Initial briefs - Friday, December 23, 2016
- Defendant's Response briefs - Monday, February 6, 2017
- Plaintiffs' Reply briefs - Monday, February 27, 2017

Lastly, the parties respectfully request that the Court rule on the ECF Doc 51 Defendant's Motion for Partial Summary Judgment on the Pleadings which deals with the Anti-Assignment Act.

Very truly yours,

**DENENBERG TUFFLEY, PLLC**

*Todd B. Denenberg*

Todd B. Denenberg

TBD/sm

cc: Robin Doyle Smith